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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 93 of 1980

with

FIRST APPEAL No 345 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution

of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

ADITYANAGAR COOP. HOUSING SOCIETY LTD.

Versus

JORABHAI @ JOGABHAI MADHABHAI RABARI DECD.THR' HEIRS & L/R.

Appearance:

1. First Appeal No. 93 of 1980
MR SK JHAVERI for Appellant
NOTICE SERVED for Respondent No. 1

2. First Appeal No 345 of 1982

MR SK JHAVERI for Appellant

MR KV SHELAT for Respondent No. 1

SERVED BY RPAD - (N) for Respondent No. 3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 09/11/2000

ORAL JUDGEMENT

First Appeal No. 93/80 and First Appeal No. 345/82 have been directed against the judgment and decree passed in Civil Suit No. 3950/73 and Civil Suit No. 338/74 respectively by the City Civil Court, Ahmedabad.

2. Looking to the amicable manner in which both the appeals are being disposed of, I do not think it necessary even to narrate brief facts of the case. After the matter was argued for some time, the learned advocates very fairly realised that it would not be possible for the parties to get justice unless some material evidence, which has not been led before the trial court, is permitted to be led and, therefore, they readily agreed to the suggestion that the cases should be remanded so that the evidence, which has not been placed on record, can be adduced before the trial court so that correct facts can be placed before the court and the matters can be decided in the light of the evidence which might be adduced. In brief, the dispute centres round the fact whether the parties to the litigation are, in fact, occupying their own lands or whether they have made some encroachment either knowingly or unknowingly on the lands belonging to the other parties. The dispute is with regard to boundaries of original Survey No. 551/1 and Survey No. 551/2 situated at Asarva in the city of Ahmedabad. According to the parties to the litigation, Survey No. 551/2 belongs to Adityanagar Co-operative Housing Society Ltd. and Survey No. 551/1 belongs to other litigants. The society admittedly has no right over Survey No. 551/1. Now, in pursuance of town planning schemes, the said survey numbers have been converted into different final plots with different measurements. The facts with regard to complete boundaries and measurements of final plots are not on record.

3. In view of the facts and circumstances stated hereinabove, the judgment and decree in respective

appeals are set aside and both the cases are remanded to the trial court to determine the right, title and interest of the concerned parties in the suit property afresh after permitting the parties to lead necessary evidence so as to ascertain correct boundaries of the area owned by them. A

trial court shall decide the suits afresh in the light of the existing evidence as well as the evidence which might be adduced hereafter. It is hoped that the parties shall do the needful for adducing evidence as soon as possible as sufficient time has already lapsed. The trial court shall also try to give due priority for expeditious disposal of the said suits.

4. In the circumstances, the judgments and decrees passed by the City Civil Court, Ahmedabad in Civil Suits Nos. 3950/73 and 338/74 are hereby set aside and the appeals are allowed with no order as to costs. Record and proceedings should be returned to the trial court as soon as possible.

(A.R. Dave, J.)

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